

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

May 11, 1999

**APPLICATION OF ALEC, INC. FOR A
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICES**

Docket No. 98-00599

**ORDER GRANTING CERTIFICATE OF
CONVENIENCE AND NECESSITY**

On April 13, 1999, this matter came before the Tennessee Regulatory Authority ("Authority"), upon the Application of ALEC, Inc. ("ALEC") for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services (the "Application"). The Application was made pursuant to Tenn. Code Ann. § 65-4-201 et seq.

LEGAL STANDARD FOR GRANTING CCN

ALEC's Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to hearing.

ALEC'S HEARING

ALEC's Application was uncontested. At the hearing held on April 13, 1999, ALEC was represented by John Knox Walkup and Sharon O. Jacobs of Wyatt, Tarrant & Combs, 1500 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219-1750. In addition, Jeffrey T. Carneal, Vice President of ALEC, Inc. presented testimony and was subject to examination by the Authority's Directors. Upon ALEC's conclusion of the proof in its case, the Authority granted ALEC's Application based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. ALEC is a closely held corporation, organized on April 28, 1997 under the laws of the State of Kentucky. ALEC is authorized to transact business in Tennessee.

2. The complete street address of ALEC's principal place of business is 1301 Broadway, Paducah, Kentucky 42001. The phone number is (502) 442-5363 and fax number is (502) 442-2685. ALEC's counsel are John Knox Walkup and Sharon O. Jacobs of Wyatt, Tarrant & Combs, 1500 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219.

3. The Application and supporting documentary information existing in the record indicate that ALEC has the requisite technical and managerial qualifications necessary to provide facilities-based and resold local exchange, exchange access and interexchange telecommunication services throughout State of Tennessee. Specifically, ALEC's management and technical teams have extensive expertise in the information, computing and telecommunications industries.

4. ALEC has the necessary capital and financial capability to provide the services it proposes to offer.

5. ALEC has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

1. In addition to providing business customers with local exchange telecommunication services, ALEC intends to compete in the exchange access and interexchange markets throughout the State of Tennessee. ALEC plans to provide service in the existing service areas of BellSouth Telecommunications, Inc.; nevertheless, ALEC seeks statewide authority so that it may expand into other service areas as market conditions warrant. Initially, ALEC plans to install switches in Nashville and/or Memphis and will operate as a switch-based reseller, and then over the next five years it will expand into other markets in Tennessee.

2. Except as may be authorized by law, ALEC does not intend to serve any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines where local exchange competition is prohibited pursuant to Tenn. Code Ann. § 65-4-201(d).

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Authority finds that approval of ALEC's application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets within the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM


1. Pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules, ALEC has filed a satisfactory small and minority-owned telecommunications business participation plan.

2. ALEC has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:


1. The Application of ALEC as applied for is approved;
2. Any party aggrieved with the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary